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6 CLARKE AND REBECCA WIXON, et al. No. C 07-02361 JSW
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9 Plaintiffs,

10 v.
11 WYNDAM RESORT DEVELOPMENT CO.
12 (f/k/a TRENDWEST RESORTS, INC.), et al.
13

14 Defendants.
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16 **NOTICE OF TENTATIVE
17 RULING AND QUESTIONS FOR
18 HEARING**

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
20 NOTICE OF THE FOLLOWING QUESTIONS FOR THE HEARING SCHEDULED ON
21 JUNE 26, 2009 AT 9:00 A.M.:

22 The Court has reviewed the parties' memoranda of points and authorities and, thus, does
23 not wish to hear the parties reargue matters addressed in those pleadings. If the parties intend to
24 rely on legal authorities not cited in their briefs, they are ORDERED to notify the Court and
25 opposing counsel of these authorities reasonably in advance of the hearing and to make copies
available at the hearing. If the parties submit such additional authorities, they are ORDERED
to submit the citations to the authorities only, with pin cites and without argument or additional
briefing. *Cf.* N.D. Civil Local Rule 7-3(d). The parties will be given the opportunity at oral
argument to explain their reliance on such authority. The Court suggests that associates or of
counsel attorneys who are working on this case be permitted to address some or all of the
Court's questions contained herein.

1 The Court **tentatively** refers the motion to strike to a special master for a report and
2 recommendation on whether all or part of the Keeley Report should be excluded from
3 consideration in connection with the motion for class certification or whether other sanctions
4 should be imposed. The Court reserves issuing a tentative ruling on the remaining motions.

5 Each party shall have twenty (20) minutes to address the following questions:

6 **Motion to Enforce and to Strike**

7 1. The Director Defendants also rely on large portions of the Keeley Report in connection
8 with the motion to dismiss. Do Plaintiffs seek similar relief in connection with that
9 motion?

10 2. Does WRDC contend that the Court can resolve the Motion for Class Certification
11 without considering the Keeley Report? If so, on what basis?

12 3. If the motion to strike is granted, in full or in part, do Plaintiffs contend that the Court
13 needs to consider Dr. Lamb's rebuttal report?

14 **Motion for Class Certification**

15 4. Does WRDC concede Plaintiffs can establish the first three requirements of Rule 23(a)?

16 5. Does Plaintiffs' proposed class definition exclude WorldMark members who purchased
17 additional vacation credits after November 5, 2006?

18 6. Why are Norman and Barbara's claims typical of the class if they have not used Bonus
19 Time? Similarly, why are Plaintiffs' claims typical of the class if they have never
20 participated in the election process or attempted to sell vacation credits?

21 **Motion to Dismiss**

22 7. The Director Defendants argue that Plaintiffs cannot show injury to WorldMark, which
23 appears to the Court to be an argument directed to the merits of Plaintiffs' claims.
24 (Reply Br. at 7 n.10, 10 n. 16.) How is that fact relevant to the adequacy of their
25 representation?

26 8. Are there any other issues the parties wish to address?

27 Dated: June 25, 2009

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE